



Department of Energy  
Acquisition Regulation

No. AL-2000-11  
Date: 12/15/00

# ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Procurement Executive of DOE and NNSA

**Subject: Implementation of Fiscal Year 2001 Legislative Provisions**

**References:**

DEAR 917.6	Management and Operating Contracts
DEAR 970.1702-1	Term of Contract and Option To Extend
FAR 31.205-46	Travel Costs
DEAR 970.3101-6	Advance Understandings on Particular Cost Items.
DEAR 970.3102-17	Travel Costs.
DEAR 970.5204-52	Foreign Travel.
DEAR 970.5204-53	Contractor Employee Travel Discounts.
FAR 36.609-1	Design Within Funding Limitations.

**When is this Acquisition Letter (AL) Effective?**

This AL implements certain provisions contained in the Energy and Water Development Appropriations Act 2001, Pub. L. 106-377, the Department of Interior and Related Agencies Appropriations Act 2001 Pub. L. 106-291, and Floyd D. Spence National Defense Authorization Act 2001 Pub. L. 106-398. The statutory provisions addressed in this AL are effective on the date of enactment of the Act containing the provision. The Energy and Water Development Appropriations Act 2001, was enacted on October 27, 2000. The Department of Interior and Related Agencies Appropriations Act 2001, was enacted on October 11, 2000. The Floyd D. Spence National Defense Authorization Act 2001 was enacted on October 30, 2000.

**When Does this AL Expire?**

This AL will remain in effect until superseded or canceled.

**Who is the Point of Contact?**

Contact Denise Wright of the Office of Procurement and Assistance Policy at (202) 586-6217.

Visit our website at [www.pr.doe.gov](http://www.pr.doe.gov) for additional information on Acquisition Letters and other policy issues.

**Guidance Included in this Acquisition Letter**

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**Section 602.** Provides that it is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds appropriated by this Act should be American-made. Additionally, when providing financial assistance to or entering into any contract with any entity notice of this policy shall be given. This section prohibits the award of contracts and subcontracts to persons who falsely label products as made in America. Persons determined by a court or Federal agency to have intentionally affixed such a false label, or any inscription with the same meaning, will be ineligible to receive any contract or subcontract using funds made available in the Act, pursuant to the debarment, suspension, and ineligibility procedures contained in FAR 9.4.

### Interior Act

**Section 301.** Provides that any publicly funded consulting service contract pursuant to 5 U.S.C. 3109 be limited to those contracts where expenditures are a matter of public record and are available for public inspection, except where otherwise provided by law.

**Section 303.** Prohibits the use of appropriations for any activity or publication/distribution of literature to promote public support or opposition to any legislative proposal on which Congressional action is not complete.

**Administrative Provision (unnumbered).** Similar to Section 304 of the Energy and Water Act, this section of the Interior Act prohibits the use of funds to prepare, issue, or process procurement documents for programs or projects for which appropriations have not been made.

### Defense Authorization

**Section 3122.** Limits funding for general plant and construction projects for DOE. Requires congressional reports when estimated costs exceed funding limits. Authorizes the Secretary of Energy to carry-out any construction project within this title as long as the total estimated cost does not exceed \$5,000,000. If during the course of a construction project the cost exceeds \$5,000,000, the Secretary shall immediately furnish a report to the congressional defense committees explaining the reasons for the cost variation..

**Section 3123.** Provides that construction may not be started or additional obligations incurred above the total estimated cost when current projections exceed 25% of the amount authorized. Additionally, estimated cost or current projections may not exceed 25% of the total estimated amounts shown in the most recent budget justification data submitted to Congress.

### **III. Preparation and Issuance of Procurement Documents For Unfunded Programs**

#### **What is the scope of this requirement?**

The requirement of Section 304 of the Energy and Water Act and the unnumbered administrative provision contained in the Interior Act apply to Departmental initiatives proposed as budget line-item programs or projects for which Congress has specifically denied funding in either of these Acts, or in any prior appropriations Act. These provisions also apply to any program or project that Congress explicitly has declined to fund in enacted bill language, whether it is a budget line-item program.

These provisions do not preclude DOE from issuing RFPs subject to the availability of funds (e.g., FAR 32.703-2), as long as the procurement is not in support of a program or project for which Congress has, as described above, specifically denied funding under either of the Acts, or any prior appropriations Act.

#### **What procedures need to be followed to implement this requirement?**

- ◆ DOE Program/Project Managers and Budget Officials shall not initiate and/or certify procurement requests for goods or services that are in support of a program or project where funding has been specifically denied by Congress under the Energy and Water Act, the Interior Act, or any prior appropriations Act, as previously described.
- ◆ DOE contracting activities shall not prepare, issue, or process procurement documents, including RFPs or draft RFPs for goods or services in support of a program or project requirement for which funds have not been properly certified by the designed authorities as appropriate and available for the requirement.

### **IV. Travel Costs**

#### **What is the scope of this requirement?**

Consistent with Section 307, not more than \$185,000,000 shall be available for reimbursement of contractor travel expenses on major DOE facility and site management contracts. Further, these funds may be used to reimburse a contractor for travel costs of its employees only to the extent that the contractor applies the same rates and amounts as those that apply to Federal employees under Subchapter I of chapter 57 of Title 5, United States Code, or rates and amounts established by the Secretary of Energy.

These are the same allowances as those currently referenced in both the Federal Acquisition Regulation cost principles (FAR 31.205-46, Travel costs) and the DEAR cost principles (970.3102-17, Travel costs).

The subject rates are contained in the:

- ◆ Federal Travel Regulations (FTR) for travel within the 48 states;
- ◆ Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; and
- ◆ Standardized Regulations (SR) for travel allowances in foreign areas.

On-line information addressing the FTRs, their applications and links to the JTRs, and SRs is located at: <http://policyworks.gov/org/main/mt/homepage/mtt/mtthp.htm>

It is not the intent of the Department to incorporate the regulations cited above in their entirety. Consistent with the current FAR/DEAR coverage, only those aspects of the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses and the regulatory coverage addressing special or unusual situations are applicable.

In addition to the allowable allowances for per diem and mileage discussed above, contractor airfare costs should not exceed coach class or equivalent airfare except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. This policy does not require contractors to use government contract airfares.

#### **What procedures need to be followed to implement this requirement?**

Contracting officers shall incorporate the following clause into existing contracts, applicable solicitations, and new awards of major DOE facility and site management contracts where the expenditure of funds is made under the FY 2001 Energy and Water Act. The contracting officer will insert the ceiling limitation amount, as specified by the Office of the Chief Financial Officer, prior to including the clause in major DOE facility and site management contracts.

It should be noted that paragraphs (a) and (b) apply to travel expenses which are reimbursed using Energy and Water Appropriations. Paragraphs (c) through (f) however, apply to all DOE appropriated funds and are consistent with Departmental cost principle policy.

- (iii) Standardized Regulations (SR) for travel allowances in foreign areas.
- (e) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to contractor travel.
- (f) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

(End of Clause)

## V. Lobbying Restrictions

**What is the scope of this requirement?**

Section 601 of the Energy and Water Act, and Section 303 of the Interior Act apply to all solicitations and awards of DOE contracts under which funds appropriated in either Act are obligated.

**What procedures need to be followed to implement this requirement?**

The following clause shall be incorporated into solicitation and awards of DOE contracts where the expenditure of funds is made available under the Energy and Water Act:

*Lobbying Restriction (Energy and Water Development Appropriations Act, 2001)*

*The contractor agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.*

(End of Clause)

Section 602, paragraph (c), of the Energy and Water Act, applies to all DOE contracts, and subcontracts, under which funds are appropriated in this Act and obligated.

**What procedures need to be followed to implement this requirement?**

Pursuant to FAR 9.405(b), awards shall not be made to entities that are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

If DOE, or DOE contractor personnel become aware of possible violation of the prohibition against falsely mislabeling products as made in America, and the entity is not on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, the matter should be promptly reported through the DOE contracting officer.

The report of an entity in violation of the prohibition against falsely mislabeling products as American-Made should be submitted to the Office of Management Systems, Office of Procurement and Assistance Management, for potential debarment of the entity pursuant to FAR 9.406-2(a)(4) and 9.406-2(b)(1)(iii).

## **VIII. Design and Construction Within Funding Limitations**

**What is the scope of this requirement?**

Section 3122 of the Defense Authorization Act, applies to all DOE contracts under which funds are appropriated in this Act and obligated.

Sections 3123, 3125, and 3126 of the Defense Authorization Act, applies to all DOE national security contracts under which funds are appropriated in this Act and obligated.

**What procedures need to be followed to implement this requirement?**

- ◆ Pursuant to FAR 36.609-1(a) the Government may require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified dollar limit (funding limitation).
- ◆ DOE Program/Project Managers and Budget Officials shall not initiate and or certify procurement requests for architect-engineer (A/E) designs and/or construction services that exceed the funding limitations as specifically described in the Defense Authorization Act, 2001.

- ◆ This authority may not be exercised until the Secretary has submitted to the congressional defense committees a report on the activities that the Secretary intends to carry out and the circumstances making those activities necessary.